IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

Crl.Rev.Pet.No. 1096 of 2000()

CRA.299/1995 of SESSIONS COURT, THALASSERY
CC.533/1993 of JUDL.MAGISTRATE OF FIRST CLASS COURT, MATTANNUR

.....

REVN. PETITIONER: APPELLANT/ACCUSED

M.ASHOK KUMAR
S/O.GOPALAN NAMBIAR
KALLIANI NIVAS
P.O.KOTTAYAMPOYIL
VIA. PATHAYAKUNNU.

BY ADV. SRI.A.K.SRINIVASAN
SRI.N.S.MOHAMMED USMAN
SRI.A.S.BENOY

RESPONDENT: RESPONDENT/COMPLAINANT & STATE

STATE OF KERALA
REPRESENTED BY S.I. OF POLICE, IRITTY
KANNUR DISTRICT AND REPRESENTED BY THE STATE PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.R.P.NO.1096/2000

ORDER ON CRL.M.P.NO.5843/2000 IN CRL.R.P.NO.1096/2000

DISMISSED

27.9.2007 SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R.UDAYABHANU, J

Crl.R.P.No.1096 of 2000

Dated this the 27th day of September, 2007

O R D E R

The revision petitioner stands convicted with respect to the offence under Sections 279, 337, 338 and 304(A) IPC and sentenced to undergo R.I. for six months with respect to the offence under Section 279 IPC, R.I. for six months with respect to the offence under Section 337 IPC, R.I. for two years with respect to the offence under Section 338 IPC and R.I. for two years and to pay a fine of Rs.5,000/- with respect to the offence under Section 304(A) IPC and in default, to undergo simple imprisonment for three months. The sentence shall run consecutively.

2. The prosecution case is that on 31.5.1992 at about 8.45 a.m. the accused/revision petitioner drove the bus bearing registration No.KL.13/1881 with more than 100 passengers in a rash and negligent manner so as to endanger human life through Uruvachal-Kakkyangad public road and as a result, the bus capsized and two of the passengers died, 10 passengers

sustained grievous injuries and others passengers sustained simple injuries.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 to 105 and Exts. P1 to P117.

4. The AMI report discloses that two spring leaves were broken. Witnesses have testified that before the accident there was the sound of breaking something. It is the version of PW83 M.V.I. that the leaves can be broken on account of overload and over speed. It has come out in evidence that the accident took place on the date of Kottiyoor festival and the fact that the bus was overloaded is evident from the testimony of witnesses examined. i.e., the passengers of the bus. Exts. P7 to 113 are the wound certificates. Exts. P5 and P6 are the postmortem certificates. Exts. P3 and P4 are the inquest reports. On a perusal of evidence adduced in the matter, I find that the identity of the accused stands proved from the evidence of occurrence witnesses. The contention that the accident took place on account of a mechanical defect has no merit in view of the fact that the bus was heavily overloaded and was in over speed. It

is very much possible that if the vehicle is driven with heavy load there is a chance to break the leaf of the vehicle. I find that the revision petitioner/accused is not entitled to contend that the leaves were broken on account of mechanical defect and hence he is liable to be acquitted. I find that he cannot disown the liability as he could have objected to heavily overloading the bus as he is the person who is aware of the mechanical condition of the bus. It has come out in evidence that the accused drove the bus in over speed. In the circumstances, I find that no interference is called for in the concurrent findings of the court below.

5. Counsel for the revision petitioner has pleaded for leniency pointing out that more than 15 years have elapsed since the commencement of the proceedings and so long the accused/revision petitioner was facing the ordeal of criminal proceedings and that his family, consisting of wife and children, is depending on his income for livelihood.

6. In the circumstances, the sentence is modified to imprisonment till the rising of the court and to pay a

compensation of Rs.25,000/- each to the legal representatives of the deceased two in number and in default, to undergo simple imprisonment for ten months. The revision petitioner is granted three months' time to remit the amount of compensation. He shall appear before the Judicial First Class Magistrate Court, Mattannur on 27.12.2007 to receive the sentence.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl